

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 441 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHABHAI DEVABHAI VAGHRI

Versus

DISTRICT MAGISTRATE

Appearance:

MR ANIL S DAVE for Petitioner

Mr.KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/04/2000

ORAL JUDGEMENT

#. The petitioner - Bhikhabhai Devubhai Vaghri, has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by District Magistrate, Ahmedabad, in exercise of powers under

Section 3(1) of the PASA Act, dated December 24, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration 6 offences registered against the petitioner. The detaining authority also took into consideration the statements of three anonymous witnesses in respect of the incidents that occurred on December 18, 1999 and December 19, 1999 and came to conclusion that the petitioner is a "bootlegger", that activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. The petition deserves to be allowed only on a single ground namely, delay in considering the representation. Learned advocate for the petitioner has produced a copy of representation dated January 24, 2000 addressed to the District Magistrate, Ahmedabad, i.e. the detaining authority which is received by him on January 25, 2000. A communication is served on the detinue in Jamnagar District Prison on March 6, 2000 stating therein that the representation of the detinue is rejected by the government after due consideration. That communication is dated February 17, 2000.

#. Mr. K.T. Dave, learned AGP has opposed this petition. He states that the representation dated January 24, 2000 was forwarded by the detaining authority to the government by a communication dated 10th February, 2000.

#. The outcome of the above facts is that the representation dated 24th January, 2000 was received by the detaining authority on 25th January, 2000, but it was communicated by him to the government on 10th February, 2000 i.e. after 16 days. At that stage, the detaining authority was required only to forward the representation as he had become functus officio. The delay of 16 days in forwarding the representation is not explained nor any affidavit-in-reply is filed. Therefore, in light of the decisions in the case of Urmilaben Navnitlal Gandhi v. Commissioner of Police, Surat City & ors. [1994 (2) GLH 10 (UJ) 10 and Salim Pothiya Belia v. District Magistrate, Mehsana & others, 1994 (2) GLH 10 (UJ) 11, the delay can be said to have adversely affected the right of the detinue of making an effective representation.

#. Apart from the above lapse, there is delay in communicating the decision on representation. This is

reflected from the communication received by the
detenue. The communication is dated 17th February, 2000
and it is served on the detenue on 6th March, 2000.
Again, there is delay of about 16 to 17 days. The
continued detention of the detenue, therefore, is
rendered bad in law and the petition deserves to be
allowed on this count alone.

#. The petition is allowed. Impugned order of detention
dated December 24, 1999 is hereby quashed and set aside.
The detenue - Bhikhabhai Devubhai Vaghri is ordered to be
set at liberty forthwith, if not required in any other
matter.

[A.L. DAVE, J.]

pirzada/-